

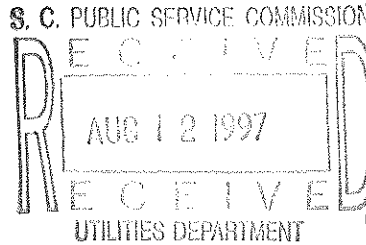
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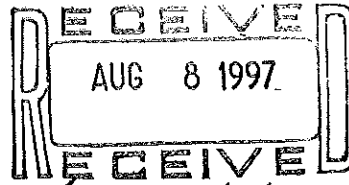
* ALSO MEMBER VIRGINIA BAR
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August 8, 1997

REPLY TO:

S. C. PUBLIC SERVICE COMMISSION

Columbia



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hand delivered

The Honorable Charles W. Ballentine
Executive Director
Public Service Commission of South Carolina
111 Doctor's Circle
Columbia, South Carolina 29203


RE: Blue Ridge Electric Cooperative, Inc., v. Duke Power Company,
n/k/a Duke Power, a division of Duke Energy Corporation
Docket No.: 97-153-E

Dear Mr. Ballentine:

Enclosed for filing, please find an original along with ten (10) copies of Blue Ridge's Motion to Strike Testimony of Philip T. Lacy. By copy of this letter, I am serving counsel for Respondent.

Should you have any questions or need additional information, please feel free to contact me.

Sincerely,


Steven W. Hamm

SWH:lhb

Enclosure(s)

cc: The Honorable Gary E. Walsh (w/enclosures)
✓ F. David Butler, Esquire (w/enclosures)
Richard L. Whitt, Esquire (w/enclosures)
Jeff Griffith, Esquire (w/enclosures)

POSTED
8/12/97

BEFORE THE
SOUTH CAROLINA
PUBLIC SERVICE COMMISSION
DOCKET NO. 97-153-E

S.C. PUBLIC SERVICE COMMISSION

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Legal *LAB* 8-11-97

IN RE: Blue Ridge Electric Cooperative Inc.,
Petitioner,
vs.
Duke Power Company,
n/k/a Duke Power, a division of
Duke Energy Corporation,
Respondent.

MOTION TO STRIKE
TESTIMONY OF
PHILIP T. LACY

S. C. PUBLIC SERVICE COMMISSION

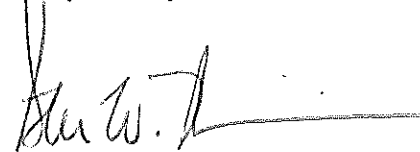
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TO: Richard L. Whitt, Esquire, Austin, Lewis & Rogers, and Jefferson D. Griffith, III, Esquire, Counsel for Respondent:

Please take notice that Petitioner will move before the South Carolina Public Service Commission for an Order to strike the testimony of Philip T. Lacy in the above-referenced matter, on the grounds that this testimony constitutes an opinion of law and improperly invades the province of the Commission. Issues of law are matters to be decided by the Courts, and opinion testimony interpreting the law is inadmissible. O'Quinn v. Beach Associates, 272 S.C. 95, 249 S.E. 2d 734 (1978), Kirkland v. Peoples Gas Co., 269 S.C. 431, 237 S.E.2d 772 (1977). The South Carolina Supreme Court has emphasized that it is within the exclusive

province of the courts to interpret the law. "Th[e] Court has a responsibility to determine the law involved,...and...that responsibility [is] diminished if th[e] Court would permit evidence...by an expert witness as to what the law is...." O'Quinn, supra, at 739-740. Witness Lacy has provided an opinion in regards to the purported appropriate "legal" interpretation of a previous Commission order. Petitioner respectfully suggests that the Commission itself is the appropriate body to interpret its own orders, and that the testimony of Witness Lacy should therefore be stricken.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Steven W. Hamm", is written over a horizontal line.

Steven W. Hamm, Esq.
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and Robinson, P.A.
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Columbia, South Carolina
August 8, 1997

DOCKET NO.: 97-153-E

Respondent.

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Columbia, South Carolina

DOCKET NO.: 97-153-E

Respondent.

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CERTIFICATE OF SERVICE

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Lynne H. Burch
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Columbia, South Carolina